

ESTTA Tracking number: **ESTTA713643**Filing date: **12/09/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	GAIA ENTERPRISES, INC.		
Entity	Corporation	Citizenship	Pennsylvania
Address	103 Roy Lane Huntingdon Valley, PA 19006 UNITED STATES		
Attorney information	Christopher Darrow Darrow Law Office 748 23rd Street Suite 1 Santa Monica, CA 90402 UNITED STATES darrow@darrowlegal.com Phone:310-717-7813		

**Registration Subject to Cancellation**

Registration No	3963355	Registration date	05/17/2011
Registrant	COMPASS MINERALS AMERICA INC. 9900 W. 109TH ST., SUITE 100 OVERLAND PARK, KS 66210 UNITED STATES		

**Goods/Services Subject to Cancellation**


Class 001. First Use: 2010/09/22 First Use In Commerce: 2010/09/22 All goods and services in the class are cancelled, namely: De-icing and ice prevention preparation for roadways, sidewalks and other paved surfaces
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**Grounds for Cancellation**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	4156873	Application Date	07/19/2011
Registration Date	06/12/2012	Foreign Priority Date	NONE
Word Mark	SAFE PAW		

Design Mark	
Description of Mark	The mark consists of word "SAFE" is over top of word "PAW" and to the right of word "PAW" is a graphic of a paw print with a cross within it.
Goods/Services	Class 001. First use: First Use: 1995/05/01 First Use In Commerce: 1995/05/01 Chemical preparations for melting snow and ice

U.S. Registration No.	4288928	Application Date	06/28/2012
Registration Date	02/12/2013	Foreign Priority Date	NONE
Word Mark	SAFE PAW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1995/05/01 First Use In Commerce: 1995/05/01 Chemical preparations for melting snow and ice		

Attachments	85374903#TMSN.png( bytes ) 85663741#TMSN.png( bytes ) Petition to Cancel.pdf(136057 bytes ) Exhibit A safe-paw-ice-melter-8-lbs-17.pdf(54313 bytes ) Exhibit B sure paws container.pdf(38808 bytes ) Exhibit C Amazon Page.pdf(1931360 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Darrow/
Name	Christopher Darrow
Date	12/09/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GAIA ENTERPRISES, INC.

Petitioner

vs.

COMPASS MINERALS AMERICA, INC.

Registrant

Cancellation No.

In the Matter of Reg. No. 3963355

Mark: SURE PAWS

Date Registered: May 17, 2011

**PETITION TO CANCEL**

As grounds for this cancellation, it is alleged that:

1. Petitioner, Gaia Enterprises, Inc., a Pennsylvania corporation with its principal place of business at 103 Roy Lane, Huntingdon Valley, Pennsylvania 19006, believes that it is or will be damaged by the continued registration of Registration No. 3963355 and hereby petitions the Trademark Trial and Appeal Board to cancel the same.

2. Upon information and belief, Registrant, Compass Minerals America, Inc., is a Delaware corporation with its principal place of business at 9900 W. 109<sup>th</sup> Street, Suite 100, Overland Park, Kansas 66210.

3. Description of Registrant's Registration No. 3963355: Filed under Section 1(b) on April 8, 2010 for the mark SURE PAWS; registered on the Principal Register in International Class 1 for "de-icing and ice prevention preparation for roadways, sidewalks and other paved surfaces." First use anywhere and in commerce alleged to be September 22, 2010.

4. Petitioner's first use anywhere and in commerce was at least May 1, 1995, well before the Registrant's first use dates. Description of Petitioner's Registrations: (1) Registration

No. 4156873 filed under Section 1(a) on July 19, 2011 for the mark SAFE PAW and design; registered on the Principal Register in International Class 1 for “chemical preparations for melting snow and ice.” First use anywhere and in commerce was at least May 1, 1995. (2) Registration No. 4288928 filed under Section 1(a) on June 28, 2012 for the mark SAFE PAW; registered on the Principal Register in International Class 1 for “chemical preparations for melting snow and ice.” First use anywhere and in commerce was at least May 1, 1995.

5. Petitioner has been continuously and extensively using its marks in interstate commerce from at least May 1, 1995 until the present. Its use has been extensive and had been known to the Registrant and its predecessors for a long period of time prior to Registrant’s application for registration of the mark at issue. Among Petitioner’s customers was the Costco Wholesale Corporation which featured Petitioner’s safe and salt free de-icing products in locations throughout the United States. Since 1995, Petitioner packaged its preparations in a number of containers including a unique plastic bottle design that was essentially copied by the Registrant indicating that the Registrant was not only familiar with the Petitioner and Petitioner’s trademark but adopted Registrant’s trademark and package design with the intention of usurping the goodwill and markets developed by the Petitioner. A photo of Petitioner’s package is attached hereto as Exhibit A and a photo of Registrant’s package is attached hereto as Exhibit B. In addition to applying the confusingly similar SURE PAWS mark to the packaging, Registrant also applied the phrase SAFE STEP to the packaging, which is likely to cause even more customer confusion with Petitioner’s SAFE PAW trademark.

6. An example of how confusion can occur can be found when searching for the product on Amazon.com. A search resulted in the page attached hereto as Exhibit C. It shows the Petitioner’s and Registrant’s products side by side. Clearly, a consumer is likely to be confused when seeing the similarity of the products.

7. It is important to note that the composition of the products is not similar. Both products can melt ice, but they do so in very different ways. The Petitioner’s product does not include any caustic salts such as sodium chloride which can be damaging to an animal’s paws.

The Registrant's product, which claims not to have salt, includes magnesium chloride which is a salt having caustic and corrosive properties that are similar to sodium chloride. Not only do these compounds harm pet animal paws, but sodium chloride and magnesium chloride also corrode metals and other surfaces whereas the Petitioner's product, which does not contain either salt, does not cause such negative effects. Furthermore, melt water containing magnesium chloride is highly electrically conductive and can negatively affect electrical circuitry. Therefore, a consumer of Registrant's product who is dissatisfied with it is likely to shun the Petitioner's product believing that it likewise contains a caustic compound, thereby harming Petitioner's goodwill, disparaging its product and diluting the value of Petitioner's brand.

8. In spite of Registrant's knowledge of Petitioner's goods and its marks, Registrant nevertheless filed its application to register its deliberately confusingly similar mark stating in Registrant's declaration, under oath, that "...to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive..." This statement was false when it was made.

9. The Registrant's intention was to willfully interfere with the Petitioner's business by confusing the public as to source and sponsorship and to try to wrongfully profit off the brand recognition and goodwill that Petitioner had generated for its "SAFE PAW" brand.

**False Suggestion of a Connection, Disparagement and Likelihood of Confusion**

10. Petitioner incorporates by reference herein paragraphs 1 through 9 above as though fully set forth in this Count.

11. Petitioner has, since at least May 1, 1995, used its mark in conjunction with its promotion and sale of de-icing products. Petitioner established rights in its mark prior to Registrant in that Registrant had not used its mark in commerce prior to September 22, 2010. Petitioner's first use of the mark predates any demonstrable use of the mark by Registrant.

12. Registrant's SURE PAWS mark, when applied to the Registrant's goods, creates a false and misleading suggestion of a connection with the Petitioner's SAFE PAW marks creating a likelihood of consumer confusion as to the source of Petitioner's goods such that consumers are likely to believe that Respondent is the source of said items. The goods recited in Registrant's registration overlap and are closely related to the Petitioner's goods as they are specified in the Petitioner's registrations made of record above and in the Petitioner's common law uses dating back to at least May 1, 1995. They are both marketed as being ice melting products that are safe for the paws of household pets. Ordinary consumers of the products in the marketplace would find the goods as marketed under their respective names and uses to be confusingly similar.

13. As stated above, the Registrant's product that is sold under the confusingly similar trademark SURE PAWS is inferior to the Petitioner's product that is sold under the trademark SAFE PAW. Registrant's product may cause harm rather than prevent harm as does the Petitioner's product. As such, Registrant's use of its confusingly similar mark is likely to tarnish the Petitioner's mark and bring it into contempt and disrepute.

### **Fraud**

14. Petitioner incorporates by reference herein paragraphs 1 through 13 above as though fully set forth in this Count.

15. Registrant committed actual fraud on the USPTO and the public by virtue of the inaccurate factual statements it made under oath when filing the application for the subject trademark.

16. Registrant filed the application for the subject trademark for a name that Registrant knew was confusingly similar to the Petitioner's trademarks as part of a plan to interfere with the valuable goodwill that the Petitioner has earned through its significant sales and marketing efforts. Registrant's intent was to confuse the public and the channels of trade in order to disrupt the business of the Petitioner. In fact, actual disruption has occurred in that valuable business relationships that the Petitioner had developed have been lost by the actions of

the Registrant. Registrant chose to mislead the USPTO by its statement that "...to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive..." and allowed the USPTO to rely on this falsehood.

17. Specifically, all factual statements in Registrant's application regarding its right to use a name confusingly similar to the Petitioner's name were made knowingly of their falsity. Registrant and its principals knew about the activities of the Petitioner and how Petitioner was using its marks. Registrant intended to confuse the public and to hide the ball from the USPTO. Registrant made knowing, false statements under oath.

18. Registrant's statements were material to the examination of the application for the mark that is the subject of this proceeding. Registrant knew that its rights were inferior to the rights of the Petitioner and its statements to the opposite are among the most material statements that an applicant can make to the USPTO regarding a trademark application.

19. Registrant fully intended that the USPTO rely on its misrepresentations in order to obtain allowance of its application. The USPTO relies on the integrity of declarants presenting information and does no independent investigation or corroboration of facts contained in declarations and other filings. Based on the false statements of the Registrant, the USPTO allowed the subject application and registered the confusingly similar mark. The USPTO would not have done so if the Registrant had been truthful in its declaration.

20. The Registrant knowingly made false and material representations of fact in order to induce the PTO to register the "SURE PAWS" mark.

21. Based on the aforementioned facts, Registrant knowingly made material false statements and committed fraud in order to procure rights to which it is not entitled.

WHEREFORE, Petitioner Gaia Enterprises, Inc. prays that this Petition be sustained and that the registration of the subject mark be cancelled. The filing fee under 37 C.F.R. Section



2.6(a)(16) is being submitted contemporaneously herewith.

Respectfully submitted:

Dated: December 9, 2015

By: / Christopher Darrow/  
Christopher Darrow (CA Bar No. 70701)

**Darrow Law Office**  
748 23<sup>rd</sup> Street  
Santa Monica, CA 90402  
Telephone: (310) 717-7813  
Email: darrow@darrowlegal.com

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2015, I served a copy of the foregoing Petition to Cancel on the Registrant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to Registrant at Registrants' correspondence address of record in the records of the Patent and Trademark Office as follows.

Compass Minerals America, Inc.  
9900 W. 109<sup>th</sup> Street, Suite 100  
Overland Park, Kansas 66210

Courtesy copy by email to:

Elizabeth A. Tassi  
Stinson Leonard Street LLP  
Stinson Trademark Administrator  
1201 Walnut Street, Suite 2900  
Kansas City, Missouri 64106-2150  
816.842.8600  
Trademark@stinsonleonard.com

Attorneys for Registrant

/ Christopher Darrow /  
Christopher Darrow

## EXHIBIT A



## EXHIBIT B





Frequently Bought Together



Total price: \$42.87

Add both to Cart

Add both to List

✓ This item: North American Salt 56708 Sure Paws Ice Melter, 8-Pound \$22.88

✓ Safe Paw Non-Toxic Ice Melter Pet Safe, 8 lbs. 3 oz. \$19.99

\$20.35

+ Free Shipping

Sold by: 5 Star Market

Add to Cart

\$21.30

+ Free Shipping

Sold by: Independence Fulfillment Services

Add to Cart

6 new from \$9.79

Have one to sell?

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Sponsored by Other Brands



20% off coupon

on Give the Gift of Pure, Nutritious, All Natural R...

Customers Who Viewed This Item Also Viewed

Page 1 of 4



Safe Paw Non-Toxic Ice Melter Pet Safe, 8 lbs. 3 oz.  
★★★★☆ 507  
\$19.99 ✓Prime



Safe Paw Ice Melter 35 Lbs/Pail  
★★★★★ 105  
\$79.99 ✓Prime



Snow Joe MELT25EB Melt Premium Enviro Blend Ice Melter with CMA Resealable Bag, 25-Pound  
★★★★☆ 121  
#1 Best Seller in Snow & Ice Melters  
\$9.21 ✓Prime



EcoTraction ET4RJ All Natural Volcanic Mineral Ice Traction Granules, 10 Pound Jug  
★★★★☆ 59  
\$8.87 ✓Prime



North American Salt 56720 Sure Paws Ice Melter, 20 Pound  
★★★★★ 8  
\$25.73



Safe Step 56708 Sure Paws Ice Melt, 8 Lbs (Pack of 4)  
★★★★☆ 5

Sponsored Products Related To This Item (What's this?)





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Amazon.com : North Amer... x

www.amazon.com/North-American-Salt-56708-8-Pound/dp/


Search

#1 Best Seller in Snow & Ice Melters  
\$9.21 Prime


### Sponsored Products Related To This Item (What's this?)




Traction Magic 15 Lbs  
From the Makers of Safe Paw  
★★★★★ (2)  
\$24.99 Prime




Safe Paw Non-Toxic Ice Melter Pet Safe, 8 lbs. 3 oz.  
★★★★☆ (507)  
\$19.99 (\$0.15/oz) Prime




Green Valley Earth Nature Safe Ice Melt Non-Toxic Pet Paw Safe - 1 Gallon  
★★★★★ (6)  
\$20.48 Prime




Safe Paw Ice Melter 8 lb. Jug  
★★★★★ (1)  
\$25.49



EcoTraction ET3RJ All-Natural Volcanic Mineral Ice Traction Granules, 7....  
★★★★☆ (32)  
\$12.27 Prime



Pet Friendly Subzero Ice Melt - Super Concentrated Ice Melt (1-Pack)  
\$19.70 Prime



Safe Paw Ice Melter 35 Lbs/Pail  
★★★★☆ (185)  
\$79.99 Prime

Ad feedback

### Customers Viewing This Page May Be Interested In These Sponsored Links (What's this?)

1. **Pound Melter System™ \$39** ad - Download **Pound Melter** System by Paul Sanders Today & Get 70% Off! [www.pound-melter.com/](http://www.pound-melter.com/)

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### Special Offers and Product Promotions

- Your cost could be **\$12.88 instead of \$22.88!** Get **\$10.00 off instantly** as a gift card upon approval for the **Amazon.com Store Card**. [Learn more.](#)

#### Product Description

Safe Step 56708 Sure Paws Ice Melter is 100-Percent all natural organic and safe for pets' paws and skin. Does not kill grass or vegetation. Fast acting melter melts down to -15 degree Fahrenheit. Melter comes in easy pour jug. Leaves no powdery residue. Use on sidewalks, patios and driveways.

#### Product Details

**Product Dimensions:** 5.2 x 7.2 x 12 inches ; 8 pounds  
**Shipping Weight:** 9.1 pounds [\(View shipping rates and policies\)](#)  
**Domestic Shipping:** Item can be shipped within U.S.  
**International Shipping:** This item can be shipped to select countries outside of the U.S. [Learn More](#)  
**Origin:** USA  
**ASIN:** B004HZ4G90  
**Item model number:** 56708  
**Average Customer Review:** ★★★★★ (5 customer reviews)

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Amazon.com : North Amer... x

www.amazon.com/North-American-Salt-56708-8-Pound/dp...Search

North American Salt 56708 Sure Paws Ice Melter, 8-Pound

\$22.88 & FREE Shipping on orders over \$35. DetailsOnly 2 left in stock. Ships from and sold by Amazon.com. Gift-wrap available.

Add to Cart

Product Description

Safe Step 56708 Sure Paws Ice Melter is 100-Percent all natural organic and safe for pets' paws and skin. Does not kill grass or vegetation. Fast acting melter melts down to -15 degree Fahrenheit. Melter comes in easy pour jug. Leaves no powdery residue. Use on sidewalks, patios and driveways.

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Product Dimensions:

5.2 x 7.2 x 12 inches ; 8 pounds

Shipping Weight:

9.1 pounds (View shipping rates and policies)

Domestic Shipping:

Item can be shipped within U.S.

International Shipping:

This item can be shipped to select countries outside of the U.S. [Learn More](#)

Origin:

USA

ASIN:

B004HZ4G90

Item model number:

56708

Average Customer Review:

★★★★☆ (5 customer reviews)


Amazon Best Sellers Rank:

#156,900 in Patio, Lawn & Garden (See Top 100 in Patio, Lawn & Garden)  
#167 in Patio, Lawn & Garden > Snow Removal > De-Icers & Salt Spreaders > **Snow & Ice Melters**


Manufacturer's warranty can be requested from customer service. [Click here](#) to make a request to customer service.

Would you like to [update product info](#) or [give feedback on images](#)?


Sponsored Products Related To This Item (What's this?)




Traction Magic 15 Lbs  
From the Makers of Safe Paw  
★★★★★ (2)  
\$24.99 Prime




Green Valley Earth  
Nature Safe Ice Melt  
Non-Toxic Pet Paw Safe  
- 1 Gallon  
★★★★★ (6)  
\$20.48 Prime




Safe Paw Ice Melter 35  
Lbs/Pail  
★★★★★ (185)  
\$79.99 Prime



Safe Paw Non-Toxic Ice  
Melter Pet Safe, 8 lbs. 3  
oz.  
★★★★☆ (507)  
\$19.99 (\$0.15/oz)  
Prime



Safe Paw Ice Melter 8 lb.  
Jug  
★★★★★ (1)  
\$25.49



Pet Friendly Subzero Ice  
Melt - Super  
Concentrated Ice Melt  
(1-Pack)  
\$19.70 Prime

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Customer Questions & Answers


Have a question? Search for answers



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Amazon.com : North Amer... x

www.amazon.com/North-American-Salt-56708-8-Pound/dp/ Search



North American Salt 56708 Sure Paws Ice Melter, 8-Pound

\$22.88 & FREE Shipping on orders over \$35. Details Only 2 left in stock. Ships from and sold by Amazon.com. Gift-wrap available.

Add to Cart

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Customer Questions & Answers

Have a question? Search for answers

Typical questions asked about products:

- Is the item durable?
- Is this item easy to use?
- What are the dimensions of this item?

Customer Reviews

★★★★☆

5

4.0 out of 5 stars

5 star60%

4 star0%

3 star0%

2 star0%

1 star40%

Share your thoughts with other customers

Write a customer review

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6 of 8 people found the following review helpful

★★★★☆ How is this "Natural" or "Organic?"

By Bibliomaniac on January 27, 2013

Bought this product believing the claims of being NATURAL and ORGANIC. I guess it is natural if your childhood memories include stirring up some potassium chloride with sulphuric acid to whip up a batch of potassium sulphate around the home fire. The active ingredients are listed in molecular formula on the label, always a plus in making the information accessible for any shoppers who might have bombed Chemistry 101. They are (can't do the subscript numbers on this form) MgCl2-6H2O and K2SO4, which are Magnesium Chloride (listed in Canada as a Class II toxin) and Potassium Sulfate, respectively. Both are used as fertilizers, among other uses, quite possibly non-toxic, however their use as fertilizers doesn't bode well for our waterways. Over-fertilization is why we took the phosphates out of laundry detergents.

OK, so maybe these chemicals are not toxic to our pets. Still, wouldn't NONTOXIC be a more honest labeling of this product than 100% NATURAL & ORGANIC? The label also says that it is "naturally produced," hmmm, maybe it is the inert ingredients that are natural? Nothing wrong with chemicals, part of modern life. Just find the use of "Natural" and "Organic" to obfuscate the nature of the product to be false and rather misleading.


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\$22.88 & FREE Shipping on orders over \$35. Details Only 2 left in stock. Ships from and sold by Amazon.com. Gift-wrap available.

Add to Cart

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Most Helpful Customer Reviews

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Try EcoTraction, also found on Amazon, instead.

Comment

Was this review helpful to you?

Yes

No

Report abuse

2 of 2 people found the following review helpful

☆☆☆☆☆

Terrible Product for your pet

By S. Musick on December 11, 2013

This is NOT pet friendly.. I purchased 2 of these after using Safe Paws (the blue stuff) last year as this was slightly more inexpensive and what a waste. I have a small dog and this is very irritating to his paws. I will go back to the Safe Paws and know that it will be gentle on my dog as this has some chloride in it that is not good for pets. They only list the ingredients as something a chemist has to be able to understand. Horrible to animals but works good out in the front of my house where the pets dont go.

Comment

Was this review helpful to you?

Yes

No

Report abuse

☆☆☆☆☆

sure paws salt

By m on May 29, 2013

Verified Purchase

arrive early works great and really good for dogs paws and where live the drive don't get lot of sun to melt the snow and ice and it works good even in that condition on melting ice

Comment

Was this review helpful to you?

Yes

No

Report abuse

☆☆☆☆☆

excellent

By EARL A DUFF 111 on May 1, 2014

Verified Purchase

this is a great product, and the bottle container is so much better than a bag for storage , and was easy to order.

Comment

Was this review helpful to you?

Yes


No

Report abuse

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www.amazon.com/North-American-Salt-56708-8-Pound/dp/ Search



North American Salt 56708 Sure Paws Ice Melter, 8-Pound

\$22.88 & FREE Shipping

on orders over \$35. [Details](#) Only 2 left in stock. Ships from and sold by Amazon.com. Gift-wrap available.

Add to Cart

this is a great product, and the bottle container is so much better than a bag for storage , and was easy to order.

[Comment](#) Was this review helpful to you?   [Report abuse](#)

★★★★★ Five Stars

By Mrs. Clean on July 16, 2015

Verified Purchase

Excellent


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This item: North American Salt 56708 Sure Paws Ice Melter, 8-Pound

Price: ~~\$22.88~~

Ships from and sold by Amazon.com


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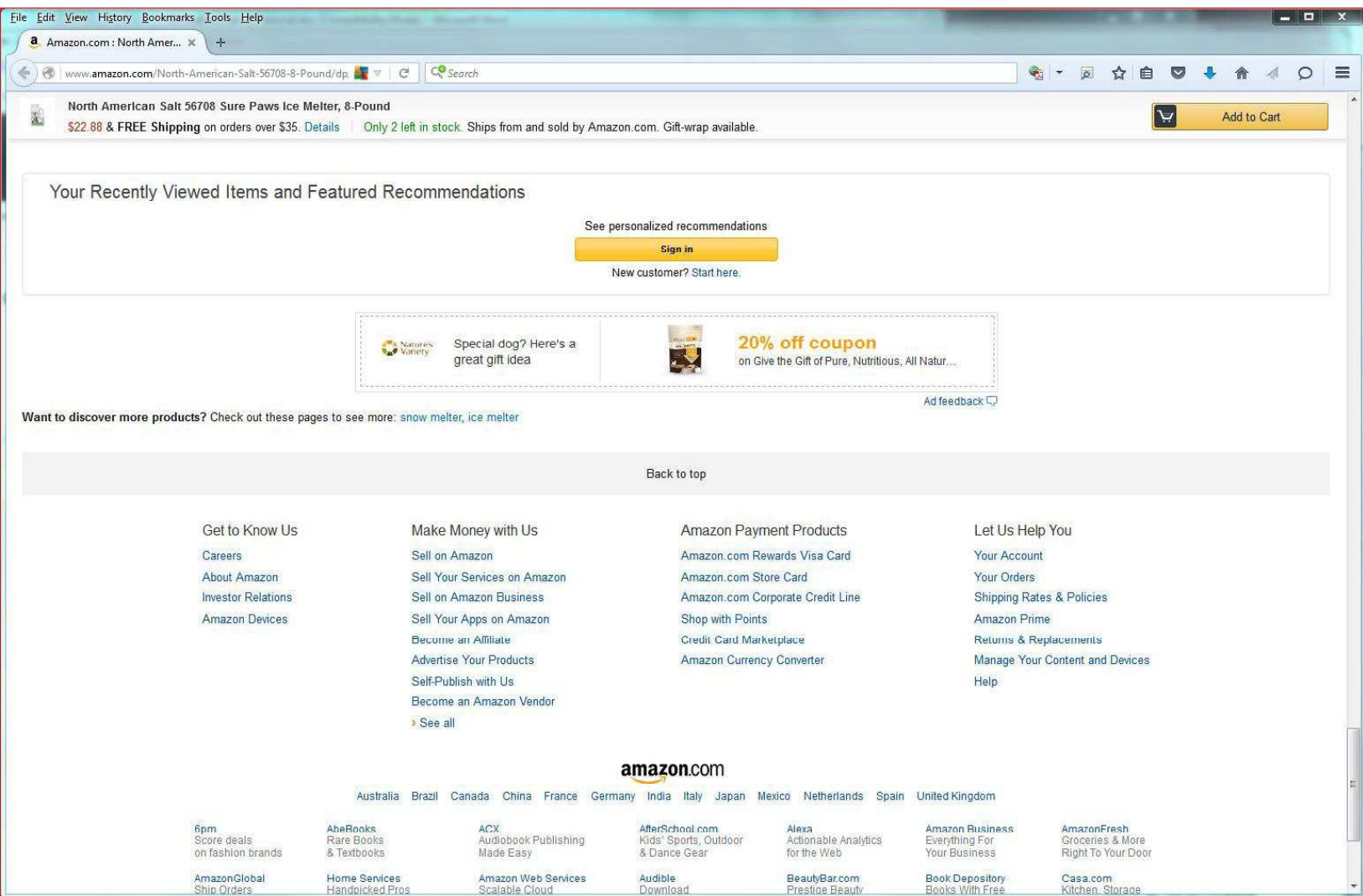
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North American Salt 56708 Sure Paws Ice Melter, 8-Pound

\$22.88 & FREE Shipping on orders over \$35. Details

Only 2 left in stock. Ships from and sold by Amazon.com. Gift-wrap available.

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Your Orders

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Amazon Prime

Returns & Replacements

Manage Your Content and Devices

Help

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6pm

Score deals on fashion brands

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Rare Books & Textbooks

ACX

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Kids' Sports, Outdoor & Dance Gear

Alexa

Actionable Analytics for the Web

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MYHABIT

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Designer Fashion Brands

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Health, Beauty & Home Essentials

TenMarks.com

Math Activities for Kids & Schools

VineMarket.com

Everything to Live Life Green

Wag.com

Everything For Your Pet

Warehouse Deals

Open-Box Discounts

Woot!

Discounts and Shenanigans

Yoyo.com

A Happy Place To Shop For Toys

Zappos

Shoes & Clothing

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